IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.741 OF 2004
IN
NOTICE OF MOTION NO.3335 OF 2002
IN
SUIT NO.3741 OF 2002

Cian De Souza,
a female, Indian Inhabitant,
aged 32 years,
residing at Flat No.4, Habib House,
Ground Floor, Ram Nagar, Dr.
B.A.Road, Byculla, Mumbai-400027 .. Appellant
(Orig.Plaintiff)

v/s.

1. Arun Gunjal,
of Mumbai, Indian Inhabitant,
age 46 years, residing at
M.S.E.B.Govt.Colony Building,
No.4/75, 3rd floor, Arun Kumar
Vaidya Nagar, Tata Power House,
Borivli (E), Mumbai-400 066.

2. Mrs.Vimal Arun Gunjal,
of Mumbai, Indian Inhabitant,
aged 37 years, residing at
M.S.E.B.Govt.Colony Building
No.4/75, 3rd floor, Arun Kumar
Vaidya Nagar, Tata Power House,
Borivli (E), Mumbai-400 066. .. Respondents
(Orig.Defendants)

Mr.Jaideep Mitra i/by Mr.G.C.Mohanty for the appellant.

Mr.V.N.Kantawala i/by M/s.Kantawala & Co. for the respondents.

CORAM : R.M.LODHA AND
ANOOP V. MOHTA, JJ.

DATED : 9th January, 2006

ORAL JUDGMENT (Per R.M.Lodha, J.)

Heard Mr.Jaideep Mitra, the learned counsel for the appellant and Mr.V.N.Kantawala, the learned counsel for the respondents.

2. The appellant is the original plaintiff and

respondents are the original defendants. The plaintiff filed the suit under section 6 of the Specific Relief Act and prayed for vacation and peaceful possession of the flat being Flat No.4, Habib House, Ground Floor, Ram Nagar, Dr.Ambedkar Road, Byculla, Mumbai from the defendants. According to the plaintiff, she was in exclusive possession of the said flat and was dispossessed therefrom by the defendants on 7th August, 2002. She averred that her mother was inducted as tenant in the suit flat by the landlord Mr.Rajkumar J. Kapur somewhere in the month of February, 1970. She was staying in the said flat alongwith her mother during her lifetime and after the death of her mother on 22nd May, 1990, she continued to remain in possession of the said flat. The plaintiff claims to have paid rent upto the month of September, 2002 to the landlord and also the electricity bills till the date of dispossession. According to the plaintiff, the defendant No.1 approached the plaintiff as real estate broker since the plaintiff had desired to transfer the tenancy in the said flat to someone else. The plaintiff at the instance of the defendant No.1 had negotiated for transfer of the tenancy rights with one Mrs.Conny De Souza. In the month of December, 1996, the plaintiff had to leave for Goa and at that time, the defendants' broke open the said flat and wrongfully dispossessed the plaintiff on December 14, 1996. The plaintiff then lodged first information report to the

police. The defendant No.1 was prosecuted for house breaking, trespass, robbery and illegal possession under the Indian Penal Code. The possession of the said flat was restored to the plaintiff. It appears that the criminal case in which defendant No.1 was prosecuted came to be dismissed for want of prosecution somewhere in the month of July, 2002. Thereafter, it is the case of the plaintiff that she was forcibly dispossessed on 7th August, 2002. She initially filed F.I.R. with the police but when nothing effective was done by the police, the plaintiff filed the present suit under section 6 of the Specific Relief Act. The plaintiff took out notice of motion for interim reliefs interalia for the appointment of the Court Receiver and appointment of the plaintiff as an agent of the Court Receiver and for injunction against the defendants and mandatory temporary injunction to the defendants to hand over possession of the suit flat to the plaintiff.

3. By an order dated 31st October, 2002, as an ad-interim measure, the learned motion Judge appointed the Court Receiver and directed the Receiver to take possession of the suit flat from the defendants and appoint the plaintiff as his agent to be in possession of the suit flat on usual terms and conditions and the direction to the plaintiff to pay the amount of rent to the landlord as before. Thereafter, the defendants

filed affidavit-in-reply in opposition to the notice of motion. In the reply affidavit, the defendants set up the case that the tenancy rights were transferred by the plaintiff to the defendants vide sale deed dated 21.10.1994 and that the defendants were put in possession. According to the defendants, they have been residing in the suit premises since the year 1994 on transfer of tenancy rights by the plaintiff. The defendants had set up the case that the allegation of the plaintiff that she was forcibly dispossessed on 7th August, 2002 is false. The defendants, thus, prayed for dismissal of the notice of motion.

4. The plaintiff filed rejoinder to the reply affidavit and set up the case that the sale deed dated 21.10.1994 is forged and fabricated and that at no point of time the defendants ever came in possession of the suit flat lawfully.

5. The learned motion Judge heard the learned counsel for the parties and by the impugned order dated 29th October, 2004 modified the ad-interim order. Though the Receiver was permitted to continue, the learned motion Judge directed that the defendants be appointed as agent of the Court Receiver and that the possession be handed over to them. Aggrieved by the order dated 29th October, 2004, the present appeal has been preferred by the plaintiff. During the pendency of the appeal, the

operation of the impugned order dated 29th October, 2004 to the extent that Court Receiver was directed to take possession of the property from the plaintiff and appoint the defendants as agent of the Court Receiver has remained stayed. In other words, the plaintiff continues to be in possession of the subject premises as an agent of the Court Receiver.

6. The basis of the impugned order is the sale deed dated 21.10.1994. The learned motion Judge did not, prima facie, accept the case of the plaintiff that the said deed was forged or fabricated. In our considered view what is important to be seen at this stage is as to whether the plaintiff was forcibly dispossessed on 7th August, 2002 as claimed or the defendants were in lawful possession much before that date as claimed by them.

7. There is no document that supports the defendants' case that they came in actual physical possession of the suit premises. The ration card that has been produced by the defendants, prima facie, shows that it was obtained after 7th August, 2002. The ration card further reveals that the gas connection was obtained on 18.9.2002. The old ration card No.36642 dated 5.8.1989 which is referred to in the ration card does not relate to the subject premises as admittedly, the defendants were not residing in the subject flat

in the year 1989. The ration card, thus, relied upon by the defendants does not support the case set up by the defendants that they are in possession of the suit flat since 1994. On the other hand, there are number of documents that support the case of the plaintiff that she has been in possession of the suit flat for the last many years. There are rent receipts in favour of the plaintiff right from the year 1993 until September, 2002. It is the plaintiff who has paid electricity bills from time to time. The last bill that has been paid by the plaintiff is of the March/April, 2002. Prima facie, the documents placed by the plaintiff on record clearly show that she has been in occupation of the suit flat after the death of her mother. Admittedly, the plaintiff's mother was tenant in the suit premises and after her death in the year 1990, the landlord has received the rent from the plaintiff. Though the plaintiff has denied execution of sale deed transferring the tenancy rights in favour of the defendant No.1, even if it be assumed that such sale deed was executed, it does not establish that the defendants were put in possession by the plaintiff. The material on record, prima facie, indicates that the plaintiff was forcibly dispossessed from the suit flat on 7th August, 2002. In view thereof, there was no justification for modification of the ad-interim order dated 31st October, 2002.

8. We, accordingly, set aside the order dated 29th October, 2004 to the extent the Court Receiver has been directed to take possession of the property from the plaintiff and appoint the defendants as agent of the Court Receiver. The ad-interim order dated 31st October, 2002 is made absolute to remain operative until disposal of the suit. No costs.

(R.M. LODHA, J.)

(ANOOP V. MOHTA, J.)